

D.B. CIVIL SPECIAL APPEAL (W) NO. 236/2007
(Mewar Marbles Ltd. Vs. State of Raj. & Ors.)

1.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. Tribhuvan Gupta, for the appellant.
Mr. LR Upadhyaya, Dy. Govt. Advocate.

Heard the learned counsel for the parties.

It is stated by the learned counsel for the appellant that in the writ petition the proceedings in pursuance of notice dated 12.6.2002 (Annex.-P/10) were challenged and interim relief was granted on understanding given by the respondents that until further hearing, the effect should not be given to the order passed in pursuance of order dated 12.6.2002 (Annex.P/10) and that no coercive action will be taken and prayer for interim relief has not been disposed of. Thus, interim relief was made and was continuing after hearing both the parties.

By order under appeal, prayer for interim relief was rejected without passing any speaking order.

Hence this appeal.

On hearing the learned counsel for the parties and perused the matter, we find that the respondents had created prior to filing of the writ petition, a demand of Rs.77,88,150 in respect of the site inspection note dated 3.7.1997 which was termed as joint inspection that the appellant has indulgence in illegal mining by opening 4 pits in Plots No. 24 and 32 which falls outside its lease.

However, the Division Bench of this Court, quashed the said demand in S.A.W. No. 398/2001. The Division Bench in appeal against the order of the learned Single Judge dismissing the writ petition filed by the present petitioner by its order dated 9.1.2002 in special appeal No. 398/2001 found that the joint inspection on 3.7.1997 was without notice to the petitioner and could not have provided foundation for levying penalty in breach of principle of natural justice and agreeing with other two grounds namely vagueness of notice and not holding the enquiry before creating demand.

This lead to fresh demand by impugned notice dated 12.6.2002 which action too was founded on joint inspection taken on 3.7.1997 while specifying the manner of computing the penalty sought to be imposed.

Apparently, the earlier notice dated 3.7.1997 was held by the Division Bench to be not a valid foundation for the penalty issued on 12.6.2002. The impugned notice in present proceedings patently suffers from the same mistake again.

In that view of the matter, the petitioner is entitled to get interim relief against the operation of final order passed in terms of notice dated 12.6.2002.

Accordingly, this appeal is allowed. The prayer for interim relief made by the appellant in writ Petition No. 3352/2002 is allowed and until the final decision of the writ petition the impugned demand shall not be recovered through coercive process.

(BHANWAROO KHAN), J.

(RAJESH BALIA), J.

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